

**New Markets Tax Credit
Allocation Agreement Q&A Document
(May 2004)**

General Compliance Questions

- 1. Will the Fund share data submitted by allocatee's with the IRS or any other entity or agency?**

The Fund will, consistent with applicable law (including IRC § 6103), make allocatee reports available for public inspection after deleting any materials necessary to protect privacy or proprietary interests.

The IRS will be given access to the Fund's data so that it may inform IRS's own compliance program for IRC Section 45D.

- 2. If the Fund finds an allocatee in default of any of the provisions within the allocation agreement, will the allocatee have an opportunity to appeal the decision? What are the Fund's potential remedies if the Fund determines that the allocatee is in default?**

The Fund will provide allocatees with notification of the Fund's determination of an event of default of the allocation agreement. If the Fund finds the allocatee in default there will be no opportunity to appeal. Potential remedies include a termination or reallocation of any unused allocations or barring the allocatee from applying in future allocation rounds. Section 8.3 of the allocation agreement lists the remedies available to the Fund when an allocatee defaults under the terms of the agreement. Since the allocatee may not appeal the Fund's default decision, the Fund strongly recommends that allocatees maintain prudent oversight of their allocation agreement requirements and consider requesting any needed amendments in advance of potential instances of default.

- 3. How does the "joint and several liability" provision of the allocation agreement apply to allocatees that intend to sub-allocate tax credit authority to subsidiary Community Development Entities (CDE)?**

As stated in the allocation agreement, the allocatee and each of its subsidiary allocatees are jointly and severally liable for any event of default under Section 8.1 whether the allocatee or any of its subsidiary allocatees incurs the default. If such an event of default occurs, the Fund may impose remedies jointly or severally upon the allocatee and its subsidiary allocatees, except that the Fund will not terminate or reallocate any unused portion of the NMTC allocation with respect to any investment commitments related to a NMTC allocation made to a non-defaulting allocatee or subsidiary allocatee, as determined by the Fund.

- 4. Will the Fund be conducting site visits and/or desk audits of allocatees? What will be the frequency of these occurrences? What documents will the allocatee need to retain and for how long a period?**

Yes, the Fund will be conducting site visits and/or desk audits. The Fund is currently developing its site visit and desk audit policies which will include selection factors and criteria for the frequency of visits. Allocatees should maintain documentation that will support compliance with the terms and

conditions of the allocation agreement, particularly Sections 3.2 and 3.3. Further guidance will be provided as it is approved and adopted by the Fund.

- 5. *Given the prohibition on claiming both a NMTC and receiving a BEA award for the same investment, what will the Fund's course of action be if an allocatee's bank investor is also a BEA applicant, and the bank lists its Qualified Equity Investment (QEI) in the allocatee (a CDFI/CDE allocatee) as a BEA eligible transaction?***

Most likely, the Fund will discover this at the time of the BEA application review and will prohibit the bank from claiming a BEA award for the investment. The Fund also reserves the right to declare the bank in default of its BEA award agreement, should it discover at a later time that an award was inappropriately made.

Questions Regarding Sections 3.2 (Uses of NMTC Allocation)

- 6. *If an allocatee is providing loans to or investments in other CDEs, how will the Fund monitor compliance with the provisions of Section 3.2? Will the Fund only consider the initial Qualified Low-Income Community Investment (QLICI) into the other CDEs, or will the Fund look through the CDEs to the end Qualified Active Low-Income Community Business (QALICB) recipients?***

The Fund will look through to the end QALICB recipient for the purposes of monitoring Sec. 3.2(b), (f), and (j) of the allocation agreement. Allocatees are required to provide the Fund with transaction level data via the Fund's Community Investment Impact System (CIIS), even if an allocatee uses multiple layers of CDEs to execute its QLICIs. For example, to determine compliance with Sec. 3.2(b) regarding service area for an allocatee that invests in other CDEs, the allocatee will submit census tract information of the end QALICB recipient that receives the QLICI proceeds to determine if the QALICB recipient was located in the service area as defined in Sec. 3.2(b). The location of the recipient CDE (or CDEs) is of no bearing.

- 7. *If an allocatee elects to transfer allocations to a subsidiary allocatee (i.e. a subsidiary CDE listed in Section 3.2(c) of its allocation agreement), will the Fund monitor compliance with Section 3.2 separately by each subsidiary or on a consolidated basis for all subsidiary allocatees that are parties to the allocation agreement?***

The Fund will monitor compliance on a consolidated basis for the total allocation amount. For example, if ABC allocatee receives a \$1 million allocation and per Section 3.2(j) of its allocation agreement, the required QLICI investment percentage is 60%, then ABC allocatee must invest at least \$510,000 (60% of the minimum dollar amount of QLICIs) into areas of severe economic distress. If ABC allocatee sub-allocates \$500,000 to each of two subsidiary CDEs, and each subsidiary CDE invests \$425,000 in eligible QLICIs, each subsidiary CDE does not have to separately invest 60% of its sub-allocation amount (\$255,000) into areas with severe economic distress. It would be permissible, for example, for one subsidiary to invest \$300,000 into areas of severe economic distress and the other to only invest \$210,000 in such areas. Provided that the total dollar amount of QLICIs invested in such areas meets or exceeds \$510,000 on a consolidated basis, the allocatee and its subsidiary allocatees would be in compliance with Section 3.2(j).

NOTE: The above example describes the approach the Fund is taking with respect to monitoring compliance with Section 3.2 of the allocation agreement. This does not mean that the IRS will adopt the same approach with respect to monitoring compliance with IRC Section 45D.

8. *How will the Fund determine compliance with Section 3.2(f) (better rates and terms) of the allocation agreement and/or Section 3.2(j) (investing in areas of higher distress)? For a transaction to meet either of these thresholds, does it have to meet each of the criteria listed in each respective section or just one? Additionally, is there any particular supporting documentation that allocatees should retain?*

The Fund will collect this information via the transaction level report in CIIS. Allocatees will report on these two sections as a unique data point for each transaction. Each transaction does not need to meet all of the criteria listed. Meeting one is sufficient. Supporting documentation must reflect information relevant at the time the loan and/or investment was made.

Supporting documentation for Section 3.2(f) may include: materials (including published materials from local regulated financial institutions within the allocatee's service area or market) demonstrating prevailing rates or terms at the time the loan or investment was made, which may be compared against the allocatee's QLICI investments; and loan documents on comparable loans that the allocatee has made prior to receiving an allocation, which may be compared against similar documents for the allocatee's QLICI investments; etc.

Supporting documentation for Section 3.2(j) may include statistical indices of economic distress such as poverty rates, median family income or unemployment rates at the census tract level (with the exception of CDFI Fund approved Target Areas, which may use block-group or equivalent data) according to the most recent decennial census. See the Fund's website for further information.

9. *How will the Fund monitor compliance with Section 3.2(d) of the allocation agreement?*

Section 3.2(d) requires certain allocatees to meet the IRS's "substantially all" requirement by making investments in entities that are unrelated to the allocatee. Allocatees will be required to indicate in the transaction level report whether each QLICI made was to a related or unrelated entity. At no time can the percentage of QLICIs made to related entities exceed 15% of the allocatee's total allocation amount.

Questions Regarding Section 6.5 (Reporting)

10. *How will an allocatee fulfill its reporting requirements as outlined in Section 6.5 of the allocation agreement?*

Allocatees will submit all of their reports, except for audited financial statements, electronically through the Allocation Tracking System (ATS) and through CIIS. Both are Internet based systems hosted by the Fund and accessible to the allocatee via its myCDFIFund account. ATS, which is accessible on a real-time basis, will permit allocatees to report on QEI data as

required under Section 6.5(a). Allocatees will submit institution and transaction level reports through CIIS and audited financial statements in paper form.

11. Are start-up allocatees that have yet to issue QEIs required to submit reports?

Submission of institution and transaction level reports, as well as the submission of audited financial statements will be required 180 days after the end of the fiscal year in which the first QEI is issued by the allocatee or any of its subsidiary allocatees. If the first QEI issuance is made by a subsidiary allocatee then both the subsidiary allocatee and the allocatee will need to submit reports for the fiscal year in which the QEI was issued. These reports will be required for each fiscal year thereafter, until the allocation agreement terminates.

12. If an allocatee transfers its allocation to a subsidiary allocatee, can the allocatee submit consolidated audited financial statements?

The CDE that submitted the allocation application and received the Notice of Allocation (the “Master CDE”) may submit separate audited statements on behalf of each subsidiary CDE, or may submit consolidated statements, provided that the activities of each sub-allocatee are segregated from those of the Master CDE and any other affiliates of the Master CDE.

13. When should reports be submitted if the allocatee and the subsidiary allocatee have differing fiscal year end dates?

Example 1 - If the allocatee has transferred or will transfer 100% of its allocation to a single subsidiary allocatee, then the report due dates are determined by the fiscal year end of the subsidiary allocatee.

Example 2 - If the allocatee has transferred or will transfer 100% of its allocation to multiple subsidiary allocatees, each with differing fiscal year ends, then the report due dates are determined by the fiscal year end of the allocatee.

Example 3 - If the allocatee will transfer less than 100% of its allocation to subsidiary allocatees, then the report due dates are determined by the fiscal year end of the allocatee.

In examples 2 and 3 above, the allocatee must submit subsidiary allocatee data for the same 12 month period as the allocatee’s. The Fund recognizes that this data may include financial information that is based on un-audited results.

14. Will there be any penalties for late reporting?

Failure to submit required reports by the required deadline may result in default of the allocation agreement. Potential remedies include termination or reallocation of any unused allocations or barring the allocatee from applying in future allocation rounds. Section 8.3 of the allocation agreement lists the remedies available to the Fund when an allocatee defaults under the terms of the agreement.

Questions Regarding Section 6.8 (CDE Certification)

15. How will an allocatee maintain their CDE Certification status?

An allocatee will be required to certify on an annual basis that they continue to meet the Fund's CDE certification requirements. The certification will be completed electronically via CIIS at the time the allocatee submits its reports. If the allocatee has transferred any portion of its allocation to a subsidiary, the allocatee will be required to certify on behalf of the subsidiary as well.

Should the allocatee (or any of its subsidiary allocatees) no longer meet the CDE certification requirements at any time, it must inform the Fund of such material event as required under Section 6.9 of the allocation agreement.

16. Are sole proprietorships and single member limited liability companies eligible for CDE certification?

In order to be certified as a CDE, an entity must be a domestic corporation or partnership for federal tax purposes. Since sole proprietorships and single member limited liability companies (LLC) generally are not considered corporations or partnerships for federal tax purposes, they cannot be certified as a CDE. Any entity that is established as a sole proprietorship or single member LLC must take the required steps to become taxable as a partnership or corporation under federal law prior to executing an allocation agreement and/or prior to an allocatee adding such entity as a subsidiary allocatee to its allocation agreement in Section 3.2(c).

17. Does the CDE certification have an expiration date?

In general, a CDE certification designation will last for the life of the organization provided the CDE continues to comply with and meet the Fund's NMTC Program requirements. The exception is those CDEs that obtained certification through self-certification as a CDFI or a SSBIC. Unlike CDE certification, CDFI certification is valid for only a defined time period. Therefore, an allocatee must either submit an application for re-certification as a CDFI or submit an application for CDE certification. The application must be submitted at the latest, 90 calendar days before the expiration date of the CDE's current CDFI certification. If the Fund receives a re-cert application from the allocatee prior to the expiration date of its CDFI certification, the allocatee will maintain its status as a certified CDE until such time as the Fund completes the certification review.

The Fund will periodically check the SBA's list of approved SSBICs. Should the allocatee no longer be a SSBIC, the Fund will notify the allocatee and allow the allocatee a set time period in which to submit a CDE certification application. This does not preclude the allocatee from informing the Fund, as required by the allocation agreement, of any loss of SSBIC designation prior to the Fund's review and notification.

Questions Regarding Section 9.11 (Amendments)

18. Can an allocatee amend their allocation agreement?

Yes. Allocatees may amend their allocation agreements by submitting written requests to the Fund's Grants Management and Compliance (GMC) Manager. The request, at a minimum must: a) identify the name and control number of the allocatee; b) identify the portion(s) of the allocation agreement that need to be modified; c) state the reasons why the allocatee is making the request; and d)

explain the extent to which the proposed modifications are consistent with what the allocatee had proposed in its initial application to the Fund, and will help to further the goals of the New Markets Tax Credit Program. The request can be submitted by mail to the Fund's GMC Manager, Community Development Financial Institutions Fund, 601 13th Street, NW, Suite 200 South, Washington, DC 20005 or by email to cdfihelp@cdfi.treas.gov or gmc@cdfi.treas.gov with subject line: NMTC: Allocation Agreement Amendment Request. Justification for approving an amendment to an allocation agreement must be based upon a determination that the amendment is: a) consistent with the intent of the NMTC Program statute and regulations and furthers the goals of the NMTC Program; b) consistent with (or not a substantive departure from) the business strategy proposed in the initial application for an allocation; and c) sufficiently narrow in scope that it does not disadvantage other allocatees or other applicants from the same allocation round.

While an amendment request can be submitted at any time, it must be submitted no later than 90 calendar days before the allocatee's fiscal year end if a determination is desired prior to the end of the allocatee's fiscal year reporting period.

19. How can allocatees add additional subsidiary CDEs to Section 3.2(c)?

Allocatees wishing to add additional subsidiaries for the purposes of a transfer of allocations should submit a CDE certification application for the subsidiary CDE as soon as possible as instructed on the Fund's website. In order for the Fund to expedite its review of the certification application and to alert the Fund that the allocatee would like to amend its allocation agreement, the allocatee should send a written request to the Fund's GMC Manager. Include the name and award number of the allocatee and the name(s) of the subsidiary CDE (if available, include the CDE Certification Application Control Number of the subsidiary) to be added to the allocation agreement. The request can be submitted by mail to the Fund's GMC Manager, Community Development Financial Institutions Fund, 601 13th Street, NW, Suite 200 South, Washington, DC 20005 or by email to cdfihelp@cdfi.treas.gov or gmc@cdfi.treas.gov with subject line: NMTC: Allocation Agreement Amendment Request. Upon certification of these CDEs, the Fund's Legal office will work with the allocatee to obtain the appropriate documents required to amend the allocation agreement. The allocatee MUST be listed as the Applicant CDE in the CDE Certification Application; do not list the additional subsidiary entities as the applicant CDE. If the application does not list the allocatee as the Applicant CDE as instructed, the Fund's databases will not link the subsidiaries to the allocatee, and the allocatee will NOT be able to add these subsidiaries to its allocation agreement, and therefore, the allocatee will NOT be able to transfer any portion of its Allocation Award to such subsidiary entities.

NOTE: the above process does not apply to allocatees certified and established as a single entity under the Delaware Series Model. All activities within ATS and all data submitted within the institution and transaction level reports should be reported as if conducted by the Master series.